

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARIO HERNANDEZ ESCALANTE,

Petitioner,

v.

KRISTI NOEM,
In her official capacity as Secretary of
Homeland Security,

TODD M. LYONS,
In his official capacity as Acting Director,
Immigration and Customs Enforcement,

NIKITA BAKER,
In his official capacity as Field Director of
ICE Baltimore Field Office,

Respondents.

Case No: 9:25-cv-00182-MJT-CLS

CASE STATUS UPDATE

This case originated in the District of Maryland in the early morning on Saturday, June 6, 2025. *See* ECF Doc. 1. Hours before, and unbeknownst to undersigned counsel, the Department of Homeland Security (“DHS”) transferred Petitioner Mario Hernandez Escalante (“Mr. Hernandez”) from the Baltimore Holding Room, in Baltimore, Maryland, to the IAH Secure Adult Detention Facility in Livingston, Texas. The petition seeks the immediate release of Mr. Hernandez from DHS’s custody because DHS has not complied with the statutes and regulations governing his detention rendering it procedurally and substantively unlawful. *See* ECF Docs. 1, 14.

The factual basis underlying the petition is fully discussed in the briefing before the Court, but it and the procedural history are briefly summarized here in explaining the current status of the

case. In December 2019, an immigration judge issued a final order of removal, but granted Mr. Hernandez's request for deferral of removal to El Salvador under the United Nations Convention Against Torture. *See* ECF Doc. 1-2. In the spring of 2020, Mr. Hernandez was placed on an Order of Supervision, allowing him to obtain work authorization while requiring him to periodically check in with ICE. On June 3, 2025, DHS detained Mr. Hernandez without providing notice, a warrant, or sufficient documentation supporting his detention. However, the 90-day period of time provided for DHS to effectuate his removal expired on March 11, 2020. 8 U.S.C. § 1231(a)(1); *Cordon-Salguero v. Noem, et al.*, 1:25-cv-1626-GLR, at 32¹ (D. Md. June 18, 2025) (attached). Thus, the burden has shifted to the government to establish a significant likelihood that Mr. Hernandez will be removed within the reasonably foreseeable future. 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). On June 6, Mr. Hernandez filed the underlying petition for a writ of habeas corpus, seeking his release from custody.

On June 16, 2025, Respondents opposed the petition and moved to dismiss the petition as improperly filed in the District of Maryland, or otherwise stay the proceedings in light of Mr. Hernandez's class membership in the class certified by the District Court for the District of Massachusetts in *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676. The parties separately briefed jurisdiction and the merits of the petition, and presented argument at a hearing in the District of Maryland on June 23, 2025. The District Court for the District of Maryland subsequently transferred the case to this Court in light of its holding that this is the proper venue. *See* ECF Doc. 18. On July 1, 2025, this Court issued an order for a status update, noting that it was prepared to issue a ruling on the pleadings.

¹ The page numbers to the transcript refer to the pages printed at the top right corner of the document.

Additional briefing is unnecessary because the ultimate issues dispositive to this petition have already been briefed.² In particular, this Court should grant the petition because Mr. Hernandez's detention was procedurally unlawful and because it remains substantively unlawful. Procedurally, DHS's documentary submissions are conflicting, inaccurate, unreliable, and not in compliance with agency regulations. *See* ECF Doc. 14 (discussing the various documents and explaining how they did not justify Mr. Hernandez's arrest). Critically, while the government weeks ago indicated that it would be serving Mr. Hernandez with a properly executed notice of revocation of release, *see* ECF Doc. 10 at 3, it has not indicated that it has done so nor would the government's attempt to correct its earlier mistakes justify its violation of the regulations in placing Mr. Hernandez in detention on June 3, 2025. Thus, his arrest and his continued detention violates his procedural due process rights. *See Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (recognizing that "[a]n agency's violation of its regulations may support a procedural due process claim.") (emphasis omitted); 8 C.F.R. § 241.2 (governing warrants of removal), § 241.4 (governing detention of noncitizens beyond the removal period).

Substantively, the government has not established a significant likelihood of Mr. Hernandez's removal in the reasonably foreseeable future. *See* ECF Doc. 14. It cannot remove Mr. Hernandez to El Salvador and has not established that it has properly identified a third country to which he could be removed in the reasonably foreseeable future.

Furthermore, upon information and belief, Mr. Hernandez has requested a reasonable fear interview because he has an individualized fear of being removed to Mexico, which is the country that DHS identified in one of the documents it submitted in this case. However, to date, DHS has

² Under the circumstances, Mr. Hernandez does not currently contest the venue transfer and submits that the briefing regarding the proper venue in this case need not be considered by this Court.

not conducted that interview. Nor has DHS indicated that it would remove Mr. Hernandez to a country that would not then send him to El Salvador, a country where an immigration judge has concluded that his life or freedom would be threatened. *See Mahdejian v. Bradford, et al.*, 9:25-cv-191-MJT-CLS, at 5-6 (E.D. Tex. July 3, 2025) (attached).

Finally, although the briefing in this case took place prior to the Supreme Court's recent orders regarding the preliminary injunction in *D.V.D.*, Respondent's claims that this case should be stayed in light of *D.V.D.* are without merit. *See* ECF Doc. 14; *see also Cordon-Salguero*, 1:25-cv-1626-GLR at 31 (noting that "The DVD preliminary injunction only covers removal and the procedures by which the government must give notice and an opportunity to seek relief therefrom, [it] does not cover issues relating to detention pending such procedures.").

These arguments are fully explained in the briefing already before the Court and sufficiently address the dispositive issues in this case. Upon its review of the pleadings, the Court should grant the habeas petition and order DHS to release Mr. Hernandez from custody.

Respectfully submitted,

/s/ Jessica Dawgert
Jessica Dawgert
NY Bar 4473880
Blessinger Legal PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 22042
(703) 738-4248
jdawgert@blessingerlegal.com